

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JIMMIE LEWIS,	§
	§ No. 253, 2010
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ C.A. No. 10M-04-043
	§ Cr. ID No. 0305016966
Respondent Below-	§
Appellee.	§

Submitted: May 21, 2010

Decided: June 29, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 29th day of June 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The petitioner-appellant, Jimmie Lewis, filed an appeal from the Superior Court's April 15, 2010 order denying his petition for a writ of habeas corpus. The respondent-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest

on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in October 2003, Lewis was found guilty by a Superior Court jury of Carjacking in the Second Degree, Felony Theft, and Resisting Arrest. In 2005, he was sentenced to a total of 8 years of Level V incarceration, 2 years of which were suspended. In 2009, Lewis began serving his probationary sentence. On June 24, 2009, he was charged with a violation of probation (“VOP”) and, on December 29, 2009, was arrested in Ohio, based upon the Delaware VOP warrant. Lewis contested his extradition and did not return to Delaware until March 19, 2010. On April 6, 2010, the Superior Court found that Lewis had committed a VOP and sentenced him to a total of 90 days at Level IV, with an effective date of March 19, 2010.

(3) In his appeal from the Superior Court’s denial of his petition for a writ of habeas corpus, Lewis claims that he was never properly credited with the time he spent incarcerated in Ohio awaiting extradition to Delaware and that, therefore, the Superior Court erroneously concluded that he was not entitled to habeas corpus relief.

¹ Supr. Ct. R. 25(a).

(4) In Delaware, the writ of habeas corpus provides relief on a very limited basis.² Habeas corpus only provides “an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment.”³ “Habeas corpus relief is not available to ‘[p]ersons committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment.’”⁴

(5) In this case, Lewis does not challenge the Superior Court’s jurisdiction to impose his 2005 sentence. Nor does he challenge the Superior Court’s jurisdiction to impose his 2010 VOP sentence. Rather, Lewis’ claim is grounded in his allegation that he should be credited with the time he was incarcerated in Ohio awaiting extradition to Delaware. As such, Lewis is not entitled to habeas corpus relief and the judgment of the Superior Court must be affirmed.⁵

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

² *Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

³ *Id.*

⁴ *Id.* (quoting Del. Code Ann. tit. 10, §6902(1)).

⁵ The record reflects that, in its order denying Lewis’ habeas corpus petition, the Superior Court *sua sponte* requested the Department of Correction to conduct an investigation into Lewis’ claim that he had not been properly credited with Level V time. Following the investigation, the Superior Court, in an order dated April 22, 2010, declined to modify Lewis’ VOP sentence based upon the time he spent incarcerated in Ohio.

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice